

# **EXHIBIT D**

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Bail Hearing

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

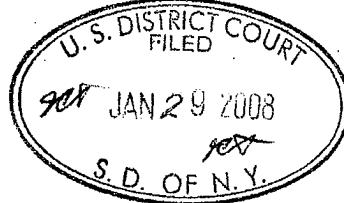
UNITED STATES OF AMERICA,

v.

07 CR 00907 (SAS)

JOHN MELICHAREK,

Defendant.

New York, N.Y.  
December 12, 2007  
3:30 p.m.

Before:

HON. SHIRA A. SCHEINDLIN,

District Judge

## APPEARANCES

MICHAEL J. GARCIA

United States Attorney for the  
Southern District of New York

ELIE HONIG

BENJAMIN GRUENSTEIN

Assistant United States Attorneys

JOHN MERINGOLO

-AND-

BARRY LEVIN

Attorneys for Defendant

ALSO PRESENT: JOHN LaRAIA, FBI

ANGIE GRIMWOOD, Paralegal

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1 MR. LEVIN: Correct.

2 THE COURT: If I counted it right, it's 11 cosigners.  
3 So you're talking about a large bond to be secured by 1.2  
4 million dollars in equity and 11 cosigners.

5 MR. LEVIN: Yes, your Honor.

6 THE COURT: Sounds substantial. All right.

7 Mr. Honig.

8 MR. HONIG: Judge, a couple of points. Can I use the  
9 mike?

10 THE COURT: Sure.

11 MR. HONIG: First of all, the first appeal of the bail  
12 there was a significant package offered, as well.

13 THE COURT: Not as significant as this.

14 MR. HONIG: No. This is an incremental increase.

15 Last time the offer was \$850,000 worth of home equity; now it's  
16 up to 1.2 million dollars. Last time it was three homes, now  
17 it's four homes. Last time it was four cosigners, it's still  
18 four cosigners.

19 THE COURT: So it's 11.

20 MR. HONIG: Well, if you count the owners of the  
21 homes.

22 THE COURT: I do.

23 MR. HONIG: The numbers of people are the same, with  
24 the exception of one home has been added.

25 THE COURT: Which is the added home?

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1 MR. HONIG: I believe it's the neighbors'.

2 MR. LEVIN: It's two homes that have been added, your  
3 Honor.

4 THE COURT: The two are?

5 MR. LEVIN: The neighbor -- I'm sorry for not  
6 standing. The neighbors were not in your initial bail package,  
7 and the doctor, Mr. Melicharek's sister, was not in the initial  
8 bail package.

9 THE COURT: The doctors.

10 MR. LEVIN: The doctors, correct.

11 THE COURT: Right. So there's two more homes and four  
12 more signers.

13 MR. HONIG: That's what's changed on the defendant's  
14 end, Judge. We've already invoked risk of flight, as well as  
15 danger. And the size of the bail package doesn't address the  
16 danger issue.

17 THE COURT: I don't recall though. And I need it all  
18 reviewed. I don't remember this case.

19 MR. HONIG: Sure, I can summarize it quickly. But  
20 danger is really at the heart of the argument here. And I'll  
21 address that.

22 THE COURT: And I don't remember it at all, so we have  
23 to start all over again.

24 MR. HONIG: Sure. Mr. Melicharek is charged in all  
25 eight counts of this indictment.

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1                   THE COURT: I don't even know what he is charged with.

2                   MR. HONIG: I'll run through it.

3                   THE COURT: Thank you.

4                   MR. HONIG: Counts One and Two are extortion and  
5 extortion conspiracy, same conduct. Mr. Melicharek and others  
6 essentially did an old-fashioned shakedown, \$50,000 from a  
7 contractor, including threats of violence, threats of physical  
8 harm, threats of we-know-where-you-live, we-know-who-your-  
9 family-is. Mr. Melicharek made those threats directly.

10                  The evidence on that includes testimony from the  
11 victim. There's a recorded statement by one of the other  
12 people who was participating in this shakedown with  
13 Mr. Melicharek. And there are at least two cooperators lined  
14 up to testify about it.

15                  In other words, there's a recorded statement by  
16 Mr. Iuni who's charged with this with Mr. Melicharek,  
17 explaining how they did it and how they divvied up the money  
18 after. That's Counts One and Two. That's the first criminal  
19 act.

20                  There are then two separate home invasions, Hobbs Act  
21 robberies, with 924(c)s attached to each where Mr. Melicharek  
22 and others organized and did, in fact, break into private  
23 residences of business people involved in interstate commerce.  
24 The first one was a break into a home in Morris County, New  
25 Jersey. Mr. Melicharek helped engineer it; was not physically

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1 present, but was one of the arrangers of it, was not physically  
2 present because he knew the victim personally. And more  
3 importantly, the victim knew him personally.

4 The people who Mr. Melicharek pulled together to do  
5 that robbery broke into the home, tied up the victim; it was  
6 two women and a four or five-year-old child inside who were  
7 awakened by this. They pistol-whipped the victim and made off  
8 with a significant amount of cash, jewelry, deeds, and valuable  
9 coins that they thereafter fenced. That's the first break-in  
10 in Morris County.

11 About a month later, there was another break-in in  
12 Orange County. And again, Mr. Melicharek was one of the  
13 organizers of that. Mr. Melicharek was physically present at  
14 this second one. He drove the car full of the break-in team to  
15 the site, and then waited for them outside in the car. And  
16 it's a similar pattern. Again, the break-in team broke into  
17 the home, there was an individual there, an older gentleman who  
18 was tied up, physically beaten. This time they didn't succeed  
19 in finding any money, but they missed it, they realized  
20 afterwards that they missed the cash.

21 Those are the second and third acts.

22 THE COURT: These weren't randomly-selected victims?

23 MR. HONIG: Oh, no. The first one was targeted  
24 because he had done business with one of Mr. Melicharek's  
25 friends and associates. He was involved in a scrap metal

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1 business. They knew that he had just received a large amount  
2 of cash. They scoped out his home, knew exactly where his safe  
3 was that they pistol-whipped the guy to get him to open.

4 And the second person is a minor celebrity, the second  
5 target. Man by the name -- well, the home was owned by, I  
6 believe, the girlfriend, girlfriend of a man named Paul Teutul,  
7 who's known -- there's a relatively popular cable TV show  
8 called *Orange County Choppers*. It's about Mr. Teutul's  
9 motorcycle shop; it's got a following. But he's known, he's a  
10 well-known public figure. That's why they targeted him,  
11 because they believe -- they had an inside tip that he had a  
12 significant amount of cash in his home from his business, from  
13 his motorcycle business. That's why he was targeted.

14 So they weren't random, they were targeted. And I  
15 think that's relevant here to the bail issue. Obviously when  
16 people are willing to sign for you, that means something; but  
17 here, you know, the whole M.O. here is get close to these  
18 people, people who trusted him, and turn on them and break into  
19 their homes. I'm not suggesting Mr. Melicharek is going to do  
20 that here, but it takes away a little bit from the notion that  
21 he feels a real obligation to people who are willing to get  
22 close to him and trust him with things.

23 The last count against Mr. Melicharek is the FBI did a  
24 sting involving fencing of gold coins, Krugerrands, that  
25 Mr. Melicharek did basically -- he took the coins and fenced

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1 them, not a huge amount, worth about \$17,000, but that's all on  
2 tape and pretty neatly wrapped up.

3 The evidence -- I don't want to go too much into it,  
4 but the evidence as whole includes recordings of  
5 Mr. Melicharek, recordings of his co-conspirators talking about  
6 these robberies, the break-ins, testimony from at least two,  
7 possibly more, cooperators, victim testimony from the victim of  
8 the extortion, as well as the people who were tied up and  
9 beaten in their homes.

10 THE COURT: Well, of course, they shouldn't have any  
11 evidence against Mr. Melicharek.

12 MR. HONIG: They won't be doing IDs.

13 THE COURT: Right.

14 MR. HONIG: Although they can provide relevant  
15 evidence as to motive and opportunity.

16 THE COURT: Right.

17 MR. HONIG: But no, that's correct. Although the  
18 extortion victim will certainly know exactly who he is.

19 THE COURT: Right.

20 MR. HONIG: One of the issues that the Court had  
21 raised last time is, well, how recent is any of this? The  
22 break-ins were in late '03, late '03; the extortion was in late  
23 '04, going into '05. So to the same extent that the defendants  
24 are now offering a little bit more on the bail package, I'd  
25 like to offer a little bit more about more recent things that

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1 Mr. Melicharek has been involved in.

2 Mr. Melicharek has -- he has a long criminal history,  
3 I'm not saying it's the most serious one, but he had a 1991  
4 felony for weapons possession, and then misdemeanors, two in  
5 '95 and one in 2000. So he's not a newcomer to crime, he's not  
6 the most -- he doesn't have the longest rap sheet.

7 THE COURT: What were these misdemeanors for? The  
8 presentence report -- I'm sorry, the pretrial report says  
9 criminal possession of a weapon, that was the one felony in one  
10 1991, which is a long time ago, but I don't know what the  
11 misdemeanor is for.

12 MR. HONIG: He has a 1995 gambling misdemeanor and a  
13 2000 DUI.

14 THE COURT: And one other? You said three.

15 MR. HONIG: I may have misspoke.

16 THE COURT: No, it says three in the report, three  
17 misdemeanors; one DUI, one gambling.

18 MR. LEVIN: Your Honor, the gambling are interrelated;  
19 they were two separate counts, so it's really one charge. And  
20 that's back in '90.

21 MR. HONIG: Judge, let me just briefly give the Court  
22 a little more information on some of the more recent stuff.  
23 And again, these break-ins are '03, the extortion is '04 into  
24 '05, non-ancient history. And it's all mob-connected. This is  
25 all a Genovese --

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1 THE COURT: It's all what?

2 MR. HONIG: Mob-connected. This is all Genovese  
3 family activity, and I'll go into a little more detail on that.

4 First of all, we have -- there's a recording that the  
5 defense has had that we produced back with the original  
6 discovery, I believe, from October 27th of 2005, where  
7 Mr. Melicharek is discussing with the cooperating witness,  
8 who's wearing a body wire, his plans to do another violent  
9 break-in of another business associate of his. It's about a  
10 two-minute clip. I'd like to play it for the Court, because I  
11 think it gives an important sense of what this was all about.  
12 And this is even more recent than the charged crimes.

13 THE COURT: What year you said?

14 MR. HONIG: October '05.

15 (Audiotape played)

16 MR. HONIG: Before I go any further, there's two  
17 voices on the tape. The, I guess, higher-pitched one that's  
18 more clearly heard on the tape, that's louder on the tape, is  
19 the cooperating witness. The lower-pitched one is  
20 Mr. Melicharek. I think it will be clear.

21 (Audiotape played)

22 MR. HONIG: Judge, I mean I think that largely speaks  
23 for itself. They are discussing a plan to break in to the  
24 business, walk into the business of a person in the garment  
25 district in Manhattan, meet him; while dressed as cops, rob him

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1 of cash. And you heard the reference to weed. And there's  
2 some conversation that precedes that. But that's even more  
3 recent than the charged activity. And I think that gives you a  
4 sense of what the operation was here.

5 In addition, there are four calls that we've also  
6 produced -- or not calls, body wires, that we've produced to  
7 the defense from January to March of 2006. And in those calls,  
8 Mr. Melicharek talks all about his mob connections, and I'll  
9 talk about some of those in a second. He repeatedly is  
10 discussing who that they know might cooperate with law  
11 enforcement, and ways to make sure that people don't rat.

12 Mr. Melicharek talks about the fact that he had -- the  
13 way to do it is to give the person a lawyer who will let him,  
14 Melicharek, know if the client tries to cooperate. Melicharek  
15 said he'd done this once; he'd gotten the person a lawyer who  
16 would then tell Melicharek if his client ratted. That's  
17 obviously obstruction, and it shows you there's a certain level  
18 of resources here, there's a level of sophistication and  
19 understanding of how to interfere with these processes and how  
20 to influence the process.

21 There's also recordings from '06 which they have  
22 wherein which Mr. Melicharek's discussing various ongoing  
23 crimes. He's talking about helping to arrange a loan shark  
24 loan from Joey Leo, who's an associate of the Genovese family  
25 and the nephew of the boss of the family, Danny Leo. Kicking

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1 up money from a Genovese associate to his capo, a man named  
2 Angelo Prisco, who's Mr. Melicharek's capo in the Genovese  
3 family. Mr. Melicharek talks about splitting proceeds from  
4 other activities of his with Mr. Prisco. And he says at one  
5 point that he would "do anything" for his capo, for Angelo  
6 Prisco. And that's where his priorities lay and always have.

7 You're talking about a person who's charged with just  
8 violent -- straight-up violent, really vicious crimes,  
9 committed them basically unstopped from '03 until the  
10 recordings take us through '06. He's facing an enormous amount  
11 of time, he's facing, if convicted on both 924(c) counts, 32  
12 years mandatory minimum consecutive, one of them is a  
13 brandishing charge, so it's seven years. And then the other  
14 one is 25 on top of it.

15 The evidence, I don't want to get too into it, but  
16 there's tapes to back up what cooperators say, there's victim  
17 testimony, there's crime scene testimony. He's a danger. And  
18 I don't think any bail package would address that.

19 MR. LEVIN: Your Honor, if I may respond.

20 THE COURT: Yeah, just one second. All right.

21 Mr. Levin.

22 MR. LEVIN: Your Honor, I'm not going to go through a  
23 litany of the factors under 3142, I'm sure the Court is  
24 familiar with it. But certainly the nature and circumstances  
25 of the crime are a factor the Court has to consider.

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1                   The tape that was just played I had not heard before.

2 To the extent I have listened --

3                   THE COURT: Has it been turned over to you?

4                   MR. LEVIN: No, it hasn't. Well, I'm not going to  
5 make accusations against the government. As your Honor knows,  
6 I'm new to the case, but what was turned over to me was April  
7 20th, October 23rd, October 25th, and October 27th. Those  
8 particular tapes are not that tape that I just listened to.

9 And I have the transcripts of the tapes that go with that.

10                  But be that as it may, I'm not here to dispute whether  
11 that tape is an accurate rendition or not. What I'm here to  
12 say to the Court is that, yes, the nature and circumstances of  
13 the crime certainly is one factor, a very important factor.  
14 But also one has to look to the strength of the evidence,  
15 background of the defendant, and whether he is a threat to  
16 others.

17                  And in regard to that, this Court should be aware of  
18 the fact that Mr. Melicharek is an ironworker. In the last two  
19 years prior to his incarceration, he had worked 1700 hours; and  
20 the year before that, 1,000 hours. That pretty much is  
21 full-time.

22                  He's a family man. He has two kids. His wife is a  
23 special education teacher. She's here today.

24                  And in regard to the most important issue, whether he  
25 is a danger, what the government did not tell this Court is the

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1 primary cooperating witness, a Mr. Cobb, was disclosed to  
2 Mr. Melicharek as early as the fall of 2004. Mr. Cobb was the  
3 football coach for Mr. Melicharek's son, and he was a member of  
4 the Glen Rock community.

5 Mr. Melicharek, after being informed by the FBI that  
6 Mr. Cobb was going to testify against him, continued to see  
7 Mr. Cobb on a daily basis in the community. He saw him at  
8 football games, he saw them at their children's prom as  
9 recently as July of '07.

10 And Mr. Melicharek knew he was going to be arrested,  
11 and he minded his own business. He did not threaten anyone,  
12 and he went about his business, and he stayed away from  
13 Mr. Cobb, as well as the other cooperators in this case. He  
14 has not threatened anyone. He has not attempted to get in  
15 touch with anyone. And remember, as the government points out,  
16 this goes back three years, four years in some cases.

17 So Mr. Melicharek has not threatened anyone. And I  
18 don't believe he's a danger. And I think that is a material  
19 factor under subsection G.

20 I think that the Court should also be aware that  
21 Mr. Melicharek did not -- the charged Hobbs Act robberies in  
22 the indictment, Mr. Melicharek was not the originator, the  
23 organizer, or even present. They did acknowledge he wasn't  
24 present, but it's the cooperators that created these crimes.

25 On April 20th, 2004, Mr. Bisconti and Mr. Cobb are